

## TRIBUNAL WATCH ONTARIO

### ACCESS TO JUSTICE/ACCESS TO JUSTNESS

Volumes have been written on the concept of “access to justice” (A2J). The bulk of the ink expended on A2J has focused on the judicial system, how courts provide justice. Tribunal Watch Ontario would like to extend the discussion of access to justice to examine its place, impact and import in the adjudicative tribunal justice system. Tribunals exist alongside courts, offering unique and specialized adjudication, nimble justice that is at once accessible, expeditious and fair.

The present document is meant to complement TWO’s Statement of Principles (May 2021) which articulated the aspirational goals for a worthy and worthwhile system of tribunal adjudication. Here, we tender an enumeration of expectations--from a participant’s perspective--that might define not only access to “justice” writ large, but access to **justness**.

To meet the needs of both justice and justness, a participant should expect:

- that adjudicative institutions be *properly funded*, with mandates that guarantee the *independence and impartiality* of mediators and adjudicators.
- that mediators and adjudicators are *independently selected* for their experience and expertise, and *properly trained* in the substantive and procedural protocols of their respective institutions. Mediators and adjudicators must be, and be seen to be, *free of bias and conflicts of interest*.
- that there are opportunities and mechanisms for participants to achieve a level of *legal fluency* that would include (especially for self-represented litigants or those with language or other barriers) a means to learn and understand the language of the law, to appreciate the context for the adjudication, its processes and potential outcomes.
- that there will be *as level a playing field as possible* for all participating parties, that government will ensure that parties have access to available information, representation or other support, and other tools or resources to make participation equal and equitable. Access to justice and justness should encompass the concept of active adjudication as a tool for dispute resolution and providing a more level playing field.
- that they will be ensured a *respect for a party’s rights*, including the right to a fair proceeding, the right to know the case the party has to meet, the right to be heard.
- that the process will be *affordable*. Just as parking fees are a hidden health expense in our “free” health care regime, so too, in the adjudicative tribunal context, are filing fees, photocopy disbursements, cell phone charges, internet connectivity and associated costs. This financial outlay must be acknowledged and accounted for. Moreover, access

to justness should guarantee access to legal support to assist in filing, preparation, advice and representation (when they choose to be represented).

- *a just substantive outcome*: the right result in a *timely* way, with *comprehensive and comprehensible reasons* written in plain language.

Tribunal Watch Ontario encourages a consideration of these enumerated principles as a foundation for a legal process at the adjudicative tribunal level that will be fair, open, accessible and just.<sup>1</sup>

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<sup>1</sup> See Tribunal Watch Ontario's website ([www.tribunalwatch.ca](http://www.tribunalwatch.ca)) for Statements regarding the Adjudicative Tribunal Justice System, a proposal for an Adjudicative Tribunal Justice Council and other related papers.